

2023

Deed of Agreement made pursuant to Section 106 of the Town and Country Planning Act 1990

Land to north of Upper Hoyland Road, Hoyland, Barnsley, S74 9EP

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

**[REDACTED] EXECUTORS OF THE LATE
CICELY ANNE COWGILL**

DATE 26th Sept. 2023

PARTIES

- (1) Barnsley Metropolitan Borough Council of Town Hall Barnsley South Yorkshire S70 2TA (the Council).
- (2) ADELE ANNE RIDDLE of Town End Farm, 109-111 Town End Road, Ecclesfield, Sheffield, S35 9YX, and JOHN ANDREW COWGILL of Lower Faithwaite Farm, Faithwaite, Green Lane, Hood Green, Barnsley, S75 3HL, as Executors of the late CICELY ANNE COWGILL . (the Owner).

BACKGROUND

- (A) By virtue of section 1 of the 1990 Act the Council is the local planning authority for the area in which the Site is situated and by whom the Planning Obligations hereby created are enforceable.
- (B) The Owner is the proprietor of the freehold title to the Site which is registered at the Land Registry under Title Number SYK241274.
- (C) AAA Property Group Ltd ("the Developer") and the Owner submitted the Application to the Council for planning permission for the Development.
- (D) The Council resolved on 7 June 2022 to grant the Planning Permission subject to the prior completion of this Deed.
- (E) The Owner by entering into this Deed do so to create planning obligations in respect of the Site pursuant to section 106 of the 1990 Act and agree to be bound by and to observe and perform the covenants agreements conditions and stipulations hereinafter contained.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed the following expressions shall have the following meanings:

1990 Act	the Town and Country Planning Act 1990.
Affordable Housing	affordable housing as defined in Annex 2 of the NPPF.
Affordable Housing Contribution	a financial contribution which is (if applicable) to be calculated and paid by the Owner to the Council in accordance with and in the circumstances specified in paragraphs 3.1 - 3.2 of Schedule 3 of this Deed as a contribution towards the cost of providing new Affordable Housing within the Council's administrative area.
Affordable Housing Scheme	a scheme for the provision of the Affordable Units which shall include: (a) the number, location, tenure and type of the Affordable Units; (b) details of how the proposed design and construction of the Affordable Housing Units will ensure that the Affordable Housing Units

are materially indistinguishable (in terms of outward design and appearance) from the Open Market Dwellings of similar size within the Development

(c) the Registered Provider(s) to which the Owner intend to market the Affordable Units for transfer; and

(d) draft heads of terms for the transfer of the Affordable Units to a Registered Provider

Affordable Value	means a price being not greater than 50% (fifty percent) of the Open Market Value of an equivalent open market unit or such other discounted sum agreed with the Registered Provider that is financially viable for a Registered Provider to be able to purchase an Affordable Housing Unit;.
Affordable Units	10% of the total Dwellings to be built on the Site as part of the Development and to be provided as Affordable Housing in accordance with the provisions of Schedule 3 of this Deed of which shall be provided as Affordable Housing for Rent (as defined by Annex 2 of the NPPF).
Application	the application for planning permission for the Development which was submitted to the Council on behalf of the Developer and which was given reference number 2021/1519.
Chargee	a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a Receiver)) of the whole or any part of the Affordable Units or any persons or bodies deriving title through such mortgagee or chargee or Receiver.
Commencement of Development	the date upon which the Development is begun by the carrying out on the Site pursuant to the Planning Permission of a material operation as specified in section 56(4) of the 1990 Act SAVE THAT for the purposes of this Deed the term "material operation" shall not include any operations undertaken in connection with or associated with demolition, site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remediation works, environmental investigation, site and soil surveys, diversion and laying of services, erection of a contractor's work compound, erection of a site office, erection of fencing to the site boundary and/or the temporary display of site notices or advertisements and Commence Development shall be construed accordingly.
Contributions	collectively the Affordable Housing Contribution (if applicable), the Education Contribution, and the Sustainable Travel Contribution.
Council's Approved List	means the following Registered Providers: Acis Homes

Auxesia Homes
 Anchor Hanover
 Berneslai Homes Limited;
 South Yorkshire Housing Association Limited;
 Yorkshire Housing Limited;
 Guinness Northern Counties Limited;
 Equity Housing Group Limited;
 Park properties Housing Association
 Sanctuary Housing
 Together Housing Association
 Wakefield and District Housing Limited
 and
 Yorkshire Housing Association

or such other Registered Provider(s) that may be nominated by the Owner and approved by the Council from time to time;

Default Interest Rate	4% per annum above the base rate from time to time of the Bank of England.
Development	Residential development of up to 19 dwellings and associated works
Dwelling	a residential unit that may be built on the Site pursuant to the Planning Permission and the term Dwellings shall be construed accordingly.
Education Contribution	the sum to be calculated following the issue of the Reserved Matters Approval in accordance with the Council's Supplementary Planning Document 'Financial Contributions for Schools' (adopted May 2019) up to a capped amount of £112,000 (one hundred and twelve thousand pounds) Index Linked to be paid by the Owner to the Council and to be used by the Council towards the provision of and/or improvements to school places and school educational facilities.
Expert	a person of at least 10 years post qualification continual and continuing experience in the subject matter of the dispute.
General Housing Unit	a Dwelling which is not an Affordable Unit.

Homes England	the Homes and Communities Agency (trading as Homes England) or any body or bodies undertaking the existing functions of the Homes and Communities Agency within the meaning of Part I of the Housing and Regeneration Act 2008 (or as redefined by any amendment, replacement or re-enactment of such Act).
Index Linked	increased in accordance with the following formula: (a) Amount payable = the payment specified in this Deed x (A/B) where: (b) A = the figure for the Retail Price Index published by the Office for National Statistics that applied immediately preceding the date the payment is due; and (c) B = the figure for the Retail Price Index published by the Office for National Statistics that applied when that index was last published prior to the date of this Deed.
NPPF	the National Planning Policy Framework, July 2021 (or as redefined by any amendment, replacement or re-enactment thereof).
Occupation	occupation for the purposes permitted by the Planning Permission but not including occupation for the purposes of fit out, decoration, marketing, display or security operations and the term Occupy and Occupied shall be construed accordingly.
Open Market Value	means an amount for which the property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion as proposed by the Owner and approved by the Council or in the absence of agreement as determined by an Valuer assessed in general accordance with the Appraisal & Valuation Manual of the Royal Institute of Chartered Surveyors as amended from time to time;
Plan	drawing reference 2337 P1 appended hereto at Schedule 1.
Planning Obligations	the obligations, conditions and stipulations set out at Schedules 3 and 4 of this Deed and the term Planning Obligation shall be construed accordingly.
Planning Permission	a planning permission permitting the Development granted by Council pursuant to the Application substantively in the form attached at Schedule 2 of this Deed.
Practical Completion	means either: (a) the issue of a certificate signed by a chartered architect which confirms that a specified Dwelling has been constructed in compliance with building regulations and is completed so as to be fit for habitation as a residential housing unit; or

- (b) the issue of a Buildmark cover note in relation to a Dwelling by the National House-Building Council or such cover note of similar effect from an alternative warranty provider

and Practically Completed shall be construed accordingly;

Protected
Tenant

any tenant who:

- (a) has exercised the right to acquire pursuant to the Housing Act 1996 or any similar statutory provision for the time being in force (or equivalent contractual or voluntary right) in respect of a particular Affordable Unit;
- (b) has exercised any statutory right to buy (or equivalent contractual or voluntary right) in respect of a particular Affordable Housing Unit;
- (c) has been granted a shared ownership lease by a Registered Provider (or similar arrangement where a share of the Affordable Unit is owned by the tenant and a share is owned by the Registered Provider) and the tenant has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns the entire Affordable Unit;
- (d) is a former tenant of an Affordable Unit who has purchased that Affordable Unit under the provisions of the Housing and Regeneration Act 2008 or any statutory right in force from time to time entitling tenants of Registered Providers to purchase their homes;
- (e) has been granted a shared ownership lease by a Registered Provider (or similar arrangement where a share of the Affordable Unit is owned by the tenant and a share is owned by the Registered Provider) in respect of a particular Affordable Unit and who has subsequently purchased from the Registered Provider all the remaining shares so that the tenant owns 100% of that Affordable Unit;
- (f) is a former tenant of an Affordable Unit where a Registered Provider sells to the tenant through Social Homebuy funded pursuant to section 19(3) of the Housing and Regeneration Act 2008, a voluntary grant scheme under section 21 of the Housing Act 1996, or any amendment or replacement thereof; and/or

any person or body deriving title through or from any of the parties mentioned in (a) to (f) above.

Registered
Provider

a registered provider of social housing as defined in Section 80(2) of the Housing and Regeneration Act 2008 and listed in the registers kept by Homes England under Chapter 3 of that Act and on the Council's Approved List.

Reserved Matters Application	means an application for the approval of reserved matters pursuant to the Planning Permission.
Reserved Matters Approval	means the approval granted in respect of the relevant Reserved Matters Application.
Site	all that Site known as land to the north of Upper Hoyland Road, Hoyland, Barnsley, S74 9EP shown edged red on the Plan.
Statutory Undertaker	any company corporation board or authority at the date of this Deed authorised by statute to carry on an undertaking for the supply of telephone or television communications, electricity, gas, water, or drainage and any authorised successor to any such undertaking.
Sustainable Travel Contribution	means the sum to be calculated following the issue of the Reserved Matters Approval in accordance with the Council's Supplementary Planning Document 'Sustainable Travel' (adopted November 2019) at £750 (seven hundred and fifty pounds) per Dwelling up to the capped amount of £14,250 (fourteen thousand two hundred and fifty pounds) Index Linked to be paid by the Owner to the Council and to be used by the Council towards sustainable travel improvements the need for which is required in order to mitigate the impacts arising from the Development.
Valuer	a chartered surveyor (being a member of the Royal Institution of Chartered Surveyors) appointed by agreement between the Owner and the Council to act as an independent expert in the determination of the Open Market Value where required in accordance with this Agreement.
Working Day	any day from Monday to Friday inclusive which is not Christmas Day, Boxing Day, Good Friday, Easter Monday or a Statutory Bank Holiday.

- 1.2 Reference in this Deed to any enactment shall be construed as a reference to that enactment as amended extended or re-enacted or repealed by or under any other enactment and shall include all instruments orders and regulations for the time being made, issued or given under that enactment.
- 1.3 Words importing one gender shall be construed as importing any gender and words importing the singular shall be construed as importing the plural and vice versa.
- 1.4 Any words denoting natural persons shall include legal persons and vice versa.
- 1.5 References to clauses paragraphs and schedules are references to clauses paragraphs and schedules to this Deed.
- 1.6 The expression Owner shall include their successors in title and assigns.
- 1.7 The expression Council shall include any successor authority to its statutory functions under the 1990 Act.
- 1.8 Where a party includes more than one person any obligations of that party shall be joint and several.
- 1.9 Clause headings shall not affect the construction of this Deed.

- 1.10 Any phrase introduced by the terms 'including' 'include' 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. STATUTORY BASIS

- 2.1 This Deed secures planning obligations made pursuant to section 106 of the 1990 Act and is enforceable pursuant to section 106(3) of the 1990 Act against the Owner and any person claiming or deriving title to the Site (or any part or parts thereof) through or under the Owner as if that person had been an original covenanting party to this Deed.
- 2.2 This Deed is enforceable by the Council as local planning authority for the purposes of the 1990 Act.
- 2.3 To the extent that the covenants, restrictions and requirements in this Agreement are not made under section 106 of the 1990 Act they are made under section 1 of the Localism Act 2011 and section 111 of the Local Government Act 1972 and all other powers so enabling.

3. CONDITIONS PRECEDENT

- 3.1 This Deed is conditional upon and does not become effective unless and until the Planning Permission is granted.
- 3.2 Clause 4 of this Deed is further conditional upon and does not become effective unless and until the Commencement of Development.

4. COVENANTS & DECLARATIONS

- 4.1 The Owner covenants with the Council to comply with the Planning Obligations in this Deed at Schedules 3 and 4.
- 4.2 The Council covenants with the Owner to comply with the obligations in this Deed at Schedule 5.
- 4.3 The Developer hereby acknowledges that its interest in the Site is bound by the covenants, restrictions and obligations in this Deed.

5. EXCLUSIONS AND RELEASE

- 5.1 No party shall be bound by the terms of this Deed or be liable for the breach of any Planning Obligation:
- 5.1.1 after it has parted with its interest in the Site or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach prior to parting with such interest);
 - 5.1.2 if it is a Statutory Undertaker which has an interest in any part of the Site for the purposes of its undertaking; or
 - 5.1.3 if that party is an owner or occupier of an individual Dwelling.
- 5.2 If the Planning Permission:
- 5.2.1 expires before the Commencement of Development; or

5.2.2 is at any time revoked or modified (without the consent of the Owner) pursuant to Part IV of the 1990 Act

this Deed shall determine and cease to have effect.

- 5.3 No obligation in this Deed shall be binding on or enforceable against any chargee or mortgagee from time to time who shall have the benefit of a charge or mortgage of or over any part of the Site (or any receiver appointed by such chargee or mortgagee) unless and until such chargee, mortgagee or receiver (or any person appointed by them) has taken or entered into possession of the Site or part thereof in which case it shall also be bound by the covenants, restrictions and obligations in this Deed as if it were a person deriving title from an original covenanting party.

6. REGISTRATION

- 6.1 This Deed is a local land charge and shall be registered as such by the Council.

- 6.2 Following either:

6.2.1 the performance and satisfaction of all the Planning Obligations contained in this Deed; or

6.2.2 the determination of this Deed in accordance with Clause 5.2;

the Council shall upon the written request of the Owner as soon as reasonably practicable effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.

7. NON-FETTER AND WAIVER

- 7.1 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions.

- 7.2 No waiver (whether expressed or implied) by the Council of any breach or default in performing or observing any of the covenants, terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms or conditions or from acting upon any subsequent breach or default.

- 7.3 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted before or after the date of this Deed.

8. SECTION 73 OF THE 1990 ACT

If an application is made under section 73 of the 1990 Act in respect of the Planning Permission to carry out the Development without complying with a condition or conditions to which the Planning Permission is subject (a S73 Application) then in the event that the Council is minded to approve such S73 Application:

- (a) if the Council considers that the Planning Obligations contained in this Deed are both sufficient and necessary to make the development proposed by such S73 Application acceptable in planning terms then references to Planning Permission in this Deed shall be deemed to also be references to that new planning permission and the Parties agree that this Deed shall apply to and remain in full force in respect of both that new planning permission and the Planning

Permission without the need for a further deed to be made pursuant to section 106 of the 1990 Act; or

- (b) if the Council considers that additional or modified planning obligations are necessary to make the development proposed by such S73 Application acceptable in planning terms then for the avoidance of doubt nothing in this Clause 8 shall fetter the Council's ability in the exercise of its proper planning judgment to require the completion of such further deed made pursuant to section 106 of the 1990 Act as it considers necessary and in such case Clause 8(a) shall be disregarded.

9. INTEREST

If any sum or amount has not been paid to the Council by the date it is due then the sum payable shall attract interest on that sum or amount at the Default Interest Rate and such interest shall accrue on a daily basis for the period from the due date to and including the actual date of payment.

10. INDEXATION

10.1 All Contributions payable to the Council shall be Index Linked.

10.2 Where reference is made in this Deed to an index, and that index ceases to exist or is replaced or rebased, then such reference shall be deemed to include any replacement or rebased index or, in the event the index is not replaced, to such alternative reasonably comparable index as the Council shall advise the Owner in writing.

11. VAT

All payments given in accordance with this Deed shall be exclusive of any value added tax properly payable.

12. SEVERANCE

If any provision in this Deed shall in whole or in part be held to be invalid, illegal or unenforceable under any enactment or rule of law such provisions shall to the extent required be severed from this Deed and shall not affect the validity or enforceability of the remaining provisions of this Deed.

13. CHANGE OF OWNERSHIP

The Owner agrees with the Council to give the Council written notice within 10 Working Days of any change in proprietorship of any of its freehold estate in the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan PROVIDED THAT this obligation shall not apply to a disposal of an individual Dwelling or a disposal to a Statutory Undertaker.

14. NOTIFICATION

14.1 Any notice, request, demand or other written communication to be given or served under this Deed must be in writing and must be:

14.1.1 delivered by hand; or

- 14.1.2 sent by pre-paid first class post or other next working day delivery service.
- 14.2 Any notice, request, demand or other written communication to be given or served under this Deed must be sent to the relevant party as follows:
- 14.2.1 to the Head of Planning and Building Control at Barnsley Metropolitan Borough
- 14.2.2 Council, Westgate Plaza One, PO Box 600, Barnsley, S70 9EZ, quoting the Application reference number 2021/1661;
- 14.2.3 to the Owner at Lower Sycamore Farm, Upper Hoyland Road, Hoyland Nether, Barnsley, South Yorkshire marked for the attention of the Owner
- at or as otherwise specified by the relevant party by notice in writing to each other party whether or not in accordance with Clause 14.
- 14.3 Any notice, request, demand or other written communication given or served in accordance with Clause 14.1 or Clause 14.2 shall be deemed to have been received:
- 14.3.1 if delivered by hand, on signature of a delivery receipt provided that if delivery occurs after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice shall be deemed to have been received at 9.00 am on the next Working Day; or
- 14.3.2 if sent by pre-paid first class post or other next working day delivery service, on the Working Day after posting.
- 14.4 A notice, request, demand or other written communication given under this deed shall not be validly given if sent by e-mail.
- 14.5 This Clause 14 does not apply to the service of any proceedings or other documents in any legal action.
15. DISPUTE RESOLUTION
- 15.1 Where the agreement, approval, consent or expression of satisfaction is required by any party under the terms of this Deed such agreement, approval, consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 15.2 Any dispute or disagreement arising under this Deed which has been identified by notice in writing by one party to the other(s) and which has not been resolved within 20 Working Days (or such lesser period as may be agreed) of the date of receipt by the other party(s) of such written notice may be referred at the instance of any party for determination by an Expert whose decision (except in cases of manifest error or fraud) shall be final and binding on the parties.
- 15.3 The following provisions and terms of appointment shall apply to such disputes or disagreements:-
- 15.3.1 the Expert shall be agreed between the parties or, in default of agreement within 10 Working Days of receipt of the notice in Clause 15.2 above, shall be appointed or identified by the following persons:
- (a) in the case of disputes relating to land or valuation matters the President of the Royal Institution of Chartered Surveyors;

(b) in the case of disputes relating to planning or design matters the President of the Royal Town Planning Institute; or

(c) in the case of any other dispute the President of the Bar Council.

15.3.2 the Expert shall act as an expert and not as an arbitrator

15.3.3 the Expert shall be required to give notice of their appointment to each of the parties (Expert's Notice) and thereafter:

(a) the persons calling for the determination shall make written submissions to the Expert and the other parties within 20 Working Days of receipt of the Expert's Notice;

(b) the other parties shall have 20 Working Days from the receipt of such written submission (or such extended period as the Expert shall allow) to respond;

(c) the Expert shall disregard any representations made out of this time; and

(d) the Expert may request further information or documentation and the parties shall comply with any requests by the Expert for further information or documentation within a reasonable time;

(e) to the extent not provided for by this clause the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate including (to the extent considered necessary) instructing professional advisers to assist them in reaching their determination

15.3.4 the Expert shall make his decision within 20 Working Days of the close of the period for submissions of written representations;

15.3.5 the Expert's decision shall be in writing and shall give reasons for the decision; and

15.3.6 each party shall bear its own costs and the Expert's costs will be payable in the determination of the Expert.

15.4 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:

15.4.1 either party may apply to the relevant body as per Clause 15.3.1 to discharge the Expert and appoint a replacement Expert with the required expertise; and

15.4.2 Clause 15.3 shall apply to the new Expert as if they were the first Expert appointed.

16. THIRD PARTY RIGHTS

No person who is not a party to this Deed may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 PROVIDED THAT this clause shall not affect any right of action of any person to whom this Deed has been lawfully assigned or becomes vested in law including successors in title to the Site.

17. COSTS

The Developer shall on (or prior to) the date hereof pay the reasonable legal costs of the Council incurred in the preparation, negotiation and completion of this Deed in the sum of £1500 (one thousand five hundred pounds).

18. JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SCHEDULE 1

Plan

Notes:

This drawing is the sole copyright of KPP Architects Ltd and reproduction in any form is forbidden unless permission is obtained in writing.

Do not scale from this drawing. Any discrepancies on site should be brought to the attention of KPP Architects Ltd.

Work and materials must comply with the current building regulations and codes of practice and be read in conjunction with building specifications and other sub-contractors information. All materials are to be installed in strict accordance with the recommendations of the manufacturers.



Rev	Description	By	Chk	Date

Client

AAA PROPERTY GROUP LTD

Project Title

**RESIDENTIAL SCHEME
UPPER HOYLAND**

Drawing Title

RED LINE PLAN

KPP
ARCHITECTS

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12 Town Street
Hornsworth, Leeds LS18 4RJ
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Scale	Site	Date	Drawn	Checked
1:1250	A4	OCT'21	-	-
STATUS				
PLANNING				
KPP Job No 2337				Rev P1
Number 2000				

SCHEDULE 2

Draft form of Planning Permission

RECOMMENDATION SHEET**Application Number:** 2021/1519**Applicant:**AAA Property Group Ltd and Cicely Anne
Cowgill
c/o Agent**Agent:**Alistair Flatman Planning
24 West End Grove
Horsforth
Leeds
LS18 5JJ**Description:**Residential development of up to 19 dwellings
and associated works (Outline with all matters
reserved apart from means of access)**Location:**Land to north of Upper Hoyland Road, Hoyland,
Barnsley, S74 9EP**Outline:****Recommendation:** Approved Subject to Legal Agreement**Conditions:**

- 1 Application for approval of the matters reserved in Condition No. 2 shall be made to the Local Planning Authority before the expiration of three years from the date of this permission, and the development, hereby permitted, shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
Reason: In order to comply with the provision of Section 92 of the Town and Country Planning Act 1990.
- 2 The development hereby permitted shall not be commenced unless and until approval of the following reserved matters has been obtained in writing from the Local Planning Authority:-
 - (a) the layout of the proposed development.
 - (b) scale of building(s)
 - (c) the design and external appearance of the proposed development.
 - (d) landscapingReason: In order to allow the Local Planning Authority to assess the details of the reserved matters with regard to the development plan and other material considerations.
- 3 The development hereby approved shall be carried out in substantial accordance with the plans (Nos 2337-2002-P1 & 3966-100-SK-004) and specifications as approved unless required by any other conditions in this permission.
Reason: In the interests of the visual amenities of the locality and in accordance with Local Plan Policy D1 High Quality Design and Place Making.
- 4 Detailed plans shall accompany the reserved matters submission indicating existing ground levels, finished floor levels of all dwellings and associated structures, road levels and any proposed alterations to ground levels. Thereafter the development shall proceed in accordance with the approved details.
Reason: To enable the impact arising from need for any changes in level to be assessed in accordance with Local Plan Policy D1 High Quality Design and Place Making.
- 5 Upon commencement of development details of the proposed external materials shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
Reason: In the interests of the visual amenities of the locality and in accordance with Local

Plan Policy D1 High Quality Design and Place Making.

- 6 Upon commencement of development details of measures to facilitate the provision of high speed full fibre broadband for the dwellings/development hereby permitted, including a timescale for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
Reason: In order to ensure compliance with Local Plan Policy I1.
- 7 Upon commencement of development a plan indicating the position of boundary treatment(s) to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be completed before the dwelling is occupied. Development shall be carried out in accordance with the approved details and shall thereafter be retained.
Reason: In the interests of the visual amenities of the locality and the amenities of occupiers of adjoining property in accordance with Local Plan Policies GD1 General Development Policy and D1 High Quality Design and Place Making
- 8 Construction or remediation work comprising the use of plant, machinery or equipment, or deliveries of materials shall only take place between the hours of 0800 to 1800 Monday to Friday and 0900 to 1400 on Saturdays and at no time on Sundays or Bank Holidays.
Reason: In the interests of the amenities of local residents and in accordance with Local Plan Policies GD1 General Development Policy and POLL1 Pollution Control and Protection.
- 9 All in curtilage planting, seeding or turfing comprised in the approved details of landscaping shall be carried out on each plot no later than the first planting and seeding season following the occupation of the individual dwellinghouse/s; and any trees or plants which die within a period of 5 years from first being planted, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
Reason: In the interests of the visual amenities of the locality, in accordance with Local Plan policies GD1 'General Development' and D1 'High Quality Design and Place Making'.
- 10 All out of curtilage planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in full in accordance with a timetable to be submitted to and approved in writing by the Local Planning Authority upon commencement of development. Thereafter the landscaping shall be carried out in accordance with the approved details and timescales.
Reason: In the interests of the visual amenities of the locality, in accordance with Local Plan policies GD1 'General Development' and D1 'High Quality Design and Place Making'
- 11 The parking/manoeuvring facilities, indicated on the submitted plan, shall be surfaced in a solid bound material (i.e. not loose chippings) and made available for the manoeuvring and parking of motor vehicles prior to the development being brought into use, and shall be retained for that sole purpose at all times.

Reason: To ensure that satisfactory off-street parking/manoeuvring areas are provided, in the interests of highway safety and the free flow of traffic and in accordance with Local Plan Policy T4 New Development and Transport Safety.
- 12 All surface water run off shall be collected and disposed of within the site and shall not be allowed to discharge onto the adjacent highway.
Reason: In the interests of highway safety in accordance with Local Plan Policies T4 New Development and Transport Safety and POLL1 Pollution Control and Protection.

- 13 No development shall take place until:

(a) Full foul and surface water drainage details, including a scheme to reduce surface water run off by at least 30% and a programme of works for implementation, have been submitted to and approved in writing by the Local Planning Authority;

(b) Porosity tests are carried out in accordance with BRE 365, to demonstrate that the subsoil is suitable for soakaways;

(c) Calculations based on the results of these porosity tests to prove that adequate land area is available for the construction of the soakaways;

Thereafter no part of the development shall be occupied or brought into use until the approved scheme has been fully implemented. The scheme shall be retained throughout the life of the development.

Reason: To ensure proper drainage of the area in accordance with Local Plan Policy POLL1 Pollution Control and Protection.

- 14 The development hereby approved shall be carried out in strict accordance with the mitigations/recommendations set out in section 7 of the Preliminary Ecological Appraisal by Envirotech dated 17/09/2021. Prior to the commencement of development, precise details of the required mitigation measures shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the approved details.

Reason: In the interest of Biodiversity and in accordance with Local Plan Policy BIO1.

- 15 The development hereby approved shall be carried out strictly in accordance with the recommendations set out in the Noise Assessment carried out by Nova Acoustics, dated 22/09/21, Project Number 6504AC, Version Reference: 001 and retained as such thereafter. Prior to the commencement of development, precise details of the required noise mitigation measures shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the approved details which shall be retained thereafter for the lifetime of the development.

Reason: To reduce or remove adverse impacts on health and the quality of life, especially for people living and/or working nearby, in accordance with Local Plan Policy POLL1

- 16 Pedestrian intervisibility splays having the dimensions of 2 m by 2 m shall be safeguarded at the drive entrance/exit such that there is no obstruction to vision at a height exceeding 1m above the nearside channel level of the adjacent highway.

Reason: In the interest of road safety in accordance with Local Plan Policy T4 New Development and Transport Safety.

- 17 Upon commencement of construction works, details of electric vehicle charge points (EVCPs) shall be submitted and approved in writing by the LPA. The EVCPs will have a minimum "Mode 3" (7 kW, 32 AMP) capability and shall be installed in accordance with the approved details prior to first occupation of the development and thereafter in accordance with the approved details.

Reason: To ensure the new residential units are provided with infrastructure that conforms with the requirements of LP Policy T3 - New Development and Sustainable Travel.

- 18 Prior to the first occupation of the development (or prior to the commencement of the use) hereby permitted a visibility splay measuring 2.4m x 43m shall be provided as measured

back from the centre line of the access or give way point and extending 43m along the nearside carriageway edge to each side of the access and such splay shall thereafter be maintained at all times free from any obstruction exceeding 1.05m above the level of the adjacent highway carriageway.
Reason: In the interests of highway safety.

- 19 The development hereby approved shall be carried out in strict accordance with the mitigation measures/recommendations set out in the Badger Report by Envirotech dated 17/09/2021.

Reason: In the interest of Biodiversity and in accordance with Local Plan Policy BIO1.

- 20 Prior to the commencement of the development, full details of the repositioned public bridleway gates shall be submitted to, and approved in writing by, the Local Planning Authority. The approved details shall be completed prior to the first occupation of the site and retained as such thereafter.

Reason: In the interest of pedestrian, horse riders, cyclists and motorists.

- 21 No development shall be commenced until full engineering, drainage and street lighting and constructional details of the streets proposed for highway adoption have been submitted to and approved in writing by the LPA. The development shall, thereafter, be constructed in accordance with the approved details unless otherwise agreed in writing with the LPA.
Reason: To ensure that the internal streets are planned and approved in good time to a satisfactory standard for use by the public in the interests of highway safety.

- 22 Before any dwelling is first occupied the roads and footways shall be constructed to binder course level from the dwellings to the adjoining public highway at Upper Hoyland Road in accordance with details of a completion plan to be submitted and approved in writing by the LPA.
Reason: To ensure streets are completed prior to occupation and satisfactory development of the site.

- 23 No development or other operations being undertaken on site shall take place until the following documents in accordance with British Standard 5837:2012 Trees in relation to design, demolition and construction - Recommendations have been submitted to and approved in writing by the Local Planning Authority:

- Arboricultural impact assessment
- Tree protective barrier details
- Tree protection plan
- Arboricultural method statement

Once approved all works should be undertaken in accordance with the approved plans with protective barriers in place for the duration of the development.

Reason: To ensure the continued wellbeing of the trees in the interests of the amenity of the locality.

- 24 No development shall be commenced until full engineering, drainage and street lighting and constructional details of the streets proposed for highway adoption have been submitted to and approved in writing by the LPA. The development shall, thereafter, be constructed in accordance with the approved details unless otherwise agreed in writing with the LPA.
Reason: To ensure that the internal streets are planned and approved in good time to a satisfactory standard for use by the public in the interests of highway safety.

- 25 Before any dwelling is first occupied the roads and footways shall be constructed to binder course level from the dwellings to the adjoining public highway at Upper Hoyland Road in accordance with details of a completion plan to be submitted and approved in writing by the

LPA.

Reason: To ensure streets are completed prior to occupation and satisfactory development of the site.

- 26 Prior to commencement, a Construction Environmental Management Plan (CEMP: Biodiversity) detailing precautionary measures to be adopted on site during construction works to protect retained habitats and to avoid harm/disturbance to protected and priority species such as nesting birds, amphibians, reptiles, foraging and commuting bats and hedgehogs shall be submitted to, and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved measures. Reason: In the interests of the visual amenities of the locality and in accordance with Local Plan Policy BIO1
- 27 Prior to commencement, a Biodiversity Enhancement Management Plan (BEMP) which would include the following shall be submitted to, and approved in writing by the Local Planning Authority:
- a plan of the areas to be maintained, enhanced and/or created;
 - a schedule of actions to create or enhance and maintain each habitat at the required quality for a period of 30 years;
 - a schedule of ecological monitoring for the 30 year period identifying when key indicators of habitat maturity should be achieved. Monitoring would be required within years 2, 5, 10, 20 and 30; and
 - schedule of actions to be undertaken in case signs of failing are identified.
 - the schedules must include details of technique(s) to be used, equipment to be used, roles and relevant expertise of personnel and organisations involved and timing of actions including submission of monitoring report to the Council.

Thereafter the approved scheme shall be carried out in accordance with the approved details and timescales.

Reason: In the interests of the visual amenities of the locality and in accordance with Local Plan Policy BIO1

Informative(s):

- 1 The proposed development lies within an area that has been defined by the Coal Authority as containing potential hazards arising from former coal mining activity at the surface or shallow depth. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and former surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of new development taking place.

It is recommended that information outlining how former mining activities may affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), is submitted alongside any subsequent application for Building Regulations approval (if relevant).

Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant land stability and public safety risks. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should wherever possible be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design is developed which takes into account all the relevant safety and environmental risk factors, including mine gas and mine-water.

Your attention is drawn to The Coal Authority Policy in relation to new development and mine entries available at: www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries

- 2 Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, excavations for foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at:
www.gov.uk/government/organisations/the-coal-authority

- 3 Informative Note valid from 1st January 2021 until 31st December 2022
The granting of planning permission does not in any way infer that consent of the landowner is given. Therefore the consent of all relevant landowners is required before proceeding with any development including that of the Council as landowner.

If it should transpire that the applicant does not own any of the land included in this consent then it is the responsibility of the applicant to seek all necessary consents and approvals of the landowner.

- 4 The granting of planning permission does not effect the status of species such as owls and bats which have protection under other legislation. These may be present, and it is the applicant's responsibility to seek advice on how to avoid damaging operations. Further advice can be obtained from the Countryside Unit in the Planning & Transportation Services, on 01226-772576, or directly from www.naturalengland.org.uk
- 5 A public right of way runs alongside the proposed development site. Safe public access on the right of way should remain available whenever possible, with no obstruction of or encroachment onto the width of the path and no building debris, storage of materials or parked vehicles limiting access at any time. Appropriate measures should be taken to protect the public, including fencing if necessary. If safe public access is not possible at any time then a temporary closure must be arranged, providing at least 4 weeks' notice and details of how public access will be managed. For further information contact publicrightsofway@barnsley.gov.uk.
- 6 The development hereby approved includes the construction of new highway. To be considered for adoption and on-going maintenance at public expense, it must be laid out and constructed to the BMBC engineering standard details and to the terms of phasing of the development. You are advised that you must enter into a highway agreement under S38 of the Highways Act 1980. The development will be bound by the Sections 219 to 225 of the Highways Act 1980 (the Advances Payments Code). Fees are payable for the drafting of the agreement, approval of the highway details and inspection of the works. For more information or to apply, please contact Highways Development Control on email HighwaysDC@barnsley.gov.uk or call to 01226 773555 prior to any work commencing on site. Please note that it is necessary to gain all technical and legal approvals for all street road details from the LHA prior to submission of such approved details to the LPA to discharge condition x of this consent.

Signed (Case Officer)

Date

Signed (Group Leader)

(on behalf of the Head of Planning, Policy and Building Control)

Date

SCHEDULE 3

Affordable Housing

1. PROVISION OF ON-SITE AFFORDABLE UNITS

- 1.1 The Owner shall not Commence Development until the Council has approved in writing an Affordable Housing Scheme.
- 1.2 As part of the carrying out of the Development the Owner shall ensure that the Affordable Units shall:
 - 1.2.1 be provided in accordance with an approved Affordable Housing Scheme; and
 - 1.2.2 be provided in accordance with the Planning Permission and any applicable legislation, policy and regulatory requirements relevant to the delivery of new Affordable Housing.
- 1.3 The Owner shall notify the Council of the Practical Completion of the last of the Affordable Units within 30 days thereof.

2. TRANSFER OF THE AFFORDABLE UNITS

- 2.1 The Owner shall as soon as reasonably practicable following the Commencement of Development issue draft heads of terms (the Initial Registered Provider Transfer Terms) to a Registered Provider and thereafter use reasonable endeavours to contract to transfer the Affordable Units to the Registered Provider (the Initial Registered Provider) in accordance with the approved Affordable Housing Scheme.
- 2.2 If the proposed sale does not proceed in accordance with the Initial Registered Provider Transfer Terms the Owner will continue to use Reasonable Endeavours to exchange contracts with an alternative Registered Provider appearing on the Council's Approved List (subject to any variations to the Council's Approved List that may be agreed in writing between the Council and the Owner from time to time) and will keep the Council informed of the Owner's progress.
- 2.3 If the Owner has complied with paragraphs Paragraph **Error! Reference source not found.** to Paragraph 2.2 of Schedule 3 of this Deed and no Registered Provider has contracted to acquire one or more of the Affordable Units:
 - 2.3.1 within a period of 6 months from the Practical Completion of the last of the Affordable Units; or
 - 2.3.2 upon the Occupation of 40% of the General Housing Units (whichever is the earlier)the Owner may (at the Owners' absolute discretion) either:
 - 2.3.3 suggest a further alternative Registered Provider and thereafter the procedure contained in paragraphs Paragraph 2.1 to Paragraph 2.2 of Schedule 3 shall be repeated until a Registered Provider(s) agrees to accept the transfer of such Affordable Units; or
 - 2.3.4 dispose of such Affordable Units on the open market and in lieu of the on-site provision of Affordable Housing the Owner shall pay to the Council the Affordable Housing Contribution.

3. RESTRICTION ON OCCUPATION OF GENERAL HOUSING UNITS

3.1 The Owner shall not Occupy or permit to be Occupied more than 50% of the General Housing Units until the Owner have either:

3.1.1 notified the Council in writing that the Affordable Units have been Practically Completed and transferred to the Registered Provider ; or

3.1.2 paid an Affordable Housing Contribution to the Council.

3.2 Any Affordable Housing Contribution payable in accordance with Paragraph 3.1.2 of Schedule 3 above shall be calculated as follows (in reference to each applicable Affordable Unit):

A – (B)

Where: A = the Open Market Value.

B = the Affordable Value.

In calculating any Affordable Housing Contribution:

3.2.1 in the event that the Owner and the Council cannot agree the Affordable Housing Contribution within 30 Working Days (or such lesser period as may be agreed) the Affordable Housing Contribution shall be determined by a Valuer;

3.2.2 the Valuer shall act as an expert and his decision shall be final; and

3.2.3 the costs of any determination by the Valuer shall be paid by the Owner.

4. MANAGEMENT AND OCCUPATION OF ON-SITE AFFORDABLE UNITS

4.1 Subject only to paragraphs Paragraph 5 of this Schedule 3 the Owner shall not permit the Affordable Units to be Occupied other than as Affordable Housing in accordance with an approved Affordable Housing Scheme.

4.2 For the avoidance of doubt, nothing in this Schedule 3 shall prevent any of the General Housing Units from being voluntarily provided as Affordable Housing and in such case such General Housing Units:

4.2.1 may comprise 'affordable housing' for the purposes of the National Planning Policy Framework and/or a 'qualifying dwelling' for the purposes of Regulation 49(2) of the Community Infrastructure Levy Regulations 2010; and

4.2.2 shall not comprise Affordable Units for the purposes of this Deed

5. EXCLUSIONS TO THIS SCHEDULE 3

5.1 The obligations in this Deed shall not be binding on:

5.1.1 any Protected Tenant (or any mortgagee or chargee, receiver or administrative receiver of the Protected Tenant);

5.1.2 any Chargee (subject only to Paragraph 5.2 of Schedule 3); or

5.1.3 any purchaser of an individual Affordable Unit from a Protected Tenant or a Chargee.

5.2 This Schedule 3 of this Deed shall not be binding on a Chargee PROVIDED THAT:

- 5.2.1 such Chargee has first given written notice to the Council of its intention to dispose of the relevant Affordable Unit(s) and thereafter has used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the relevant Affordable Unit(s) to a Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and
- 5.2.2 if such disposal has not completed within the three month period, the Chargee shall be entitled to dispose of the Affordable Unit(s) free from the obligations in this Schedule 3 of this Deed which thereafter will determine absolutely in respect of such Affordable Unit(s).

SCHEDULE 4

Financial Contributions

1. EDUCATION CONTRIBUTION

- 1.1 Within 28 days of the grant of the Reserved Matters Approval the Council shall notify the Owner of the sum of the Education Contribution.
- 1.2 The Owner shall pay the 50% of the Education Contribution to the Council prior to the Occupation of any Dwellings and shall not permit Occupation of any Dwellings until 50% of the Education Contribution has been paid to the Council.
- 1.3 The Owner shall pay the remaining 50% of the Education Contribution to the Council prior to the Occupation of 50% of the Dwellings and shall not permit Occupation of more than 50% of the Dwellings until the remaining 50% of the Education Contribution has been paid to the Council

2. SUSTAINABLE TRAVEL CONTRIBUTION

- 2.1 Within 28 days of the grant of the Reserved Matters Approval the Council shall notify the Owner of the sum of the Sustainable Travel Contribution,
- 2.2 The Owner shall pay the Sustainable Travel Contribution prior to the Occupation of 50% of the Dwellings and shall not permit Occupation of more than 50% of the Dwellings until the Sustainable Travel Contribution has been paid to the Council.

SCHEDULE 5

Council's Covenants

1. The Council shall issue separate receipts on request for any sum paid to it under this Deed;
2. The Council shall place the Contributions and any Affordable Housing Contribution in an interest bearing account or in separate accounts as the Council shall at its discretion decide.
3. The Council shall not apply the Contributions or any Affordable Housing Contribution for any purpose other than for the purposes set out within Clause 1.1 of this Deed;
4. In the event that any Contribution or the Affordable Housing Contribution (or any part or parts thereof) are not expended or committed within 5 (five) years of the date of payment then the sum or sums not expended plus interest accrued shall be repaid to the party that paid it or their nominee as soon as reasonably practicable; and
5. The Council shall respond to any request to account for the sums expended within 28 (twenty eight) Working Days of that request being made.

Executed as a deed by affixing the common seal of Barnsley Metropolitan Borough Council in the presence of a duly authorised signatory:

.....
Sign

.....
Print

No. 878
IN REGISTER

EXECUTED as a DEED
by

)
) Signature

as personal representative of the late Cicely
Anne Cowgill

in the presence of a witness)
.....

Witness Signature:

Witness Name:

Witness Address:

Witness Occupation:

EXECUTED as a DEED
by

[REDACTED]

)
)

Signature

as personal representative of the late Cicely
Anne Cowgill

in the presence of a witness)
.....

Witness Signature:

Witness Name:

Witness Address:

[REDACTED]

Witness Occupation: